IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CIVIL REVISION NO. 2883 OF 1985

DATE OF DECISION: November 15, 2006.

Parties Name

Shri Kuldip Singh

...PETITIONER

VERSUS

The Appellate Authority and others

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASBIR SINGH

PRESENT: Mr. Sarwan Singh, Sr. Adv., with Mr. A.S.Parmar, Advocate, for the petitioner.

Mr. J.R.Mittal, Sr. Adv., with Mr. Kashmir Singh, Advocate,

JASBIR SINGH, J. (oral)

ORDER:

It is apparent from the records that the petitioner was appointed as an Octroi Clerk in Municipal Committee, Moga, district Faridkot, on February 20, 1980. He was confirmed in service on September 16, 1980. On getting intimation regarding his appointment, matter was taken up by the higher authorities and a letter Ex. R1 was written by the Deputy Director, Local Bodies, Punjab, to the Municipal Committee stating that as one of the Municipal Councillors was closely related to the petitioner, he (petitioner) could not have been appointed in the Municipal Committee. Petitioner then filed a civil suit for declaration, laying challenge to that letter and also to recover salary w.e.f. August 1, 1981. His suit was dismissed on February 23, 1982. He went in appeal and on May 31, 1982. He was allowed to withdraw the appeal. Relevant portion of the order reads thus:-

"The plaintiff had sued for permanent injunction restraining his employer defendant from terminating his services. Normally a suit for permanent injunction is not maintainable where the prayer is to restrain the matter from terminating the services of the servant. I am satisfied that the suit is likely to fail on this defect of form. The plaintiff – appellant is, therefore, allowed to withdraw the suit with permission to file a fresh suit on the same cause of action. The suit is, therefore, dismissed as withdrawn. The appeal has become infructuous and is dismissed as such. The parties are left to bear their own costs."

Records reveal that the suit of the petitioner was ordered to be dismissed as withdrawn. During pendency of the suit, petitioner moved an application under Section 15 of the Payment of Wages Act, 1936, to claim salary w.e.f. September 1, 1982. In that application, following issues were framed:

"i) Whether the plaintiff has been removed from service by Municipal Committee, Moga, properly and in accordance with the Municipal Act/Rules?OPR

ii) Whether this court has got jurisdiction to try this case?OPR

iii) If issue No. 1 is decided in negative then to what relief the plaintiff is entitled? OPR

iv) Whether the plaintiff is entitled to the wages as claimed in the application?

v) Relief."

While deciding above mentioned issues, the authority

concerned placed reliance upon judgment of the trial Court dated August 1, 1980, vide which suit, filed by the petitioner, was dismissed and formed an opinion that as the services of the petitioner had already been terminated and he had lost in the civil suit, he is not entitled to claim wages, as was prayed by him. It appears that the judgment, passed by the appellate Court, referred to above, was not brought to the notice of the authority concerned. If the same had been brought to the notice of the authority, the decision would have been given on merits, rather than deciding the controversy merely on the ground of dismissal of the suit, filed by the petitioner. It is also not in dispute that the petitioner has filed a fresh civil suit on January 7, 1985, which is still pending, as such the authority concerned was not justified in dismissing application of the petitioner.

In view of discussion made above, this revision petition is allowed and the order under challenge is set aside. Matter is remitted to the competent authority to decide it afresh on merits, after disposing of the civil suit, mentioned above. It is made clear that the authority shall take up the matter on an application, moved by either of the parties, after conclusion of the civil suit, filed by the petitioner and act accordingly, as per law. It is made clear that if the suit has already been disposed of, the authority concerned shall act accordingly.

November 15, 2006 (Jasbir Singh)
DKC Judge